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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

Docket Number (Optional)

First Named Inventor: HUNTER, Charles Eric

Art Unit: 3627

Application Number: 09/493,854

Examiner: O'Connor, Gerald

Filed: January 28, 2000

Title: MUSIC DISTRIBUTION SYSTEMS

Attention: Office of Petitions  
**Mail Stop Petition**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

NOTE: If information or assistance is needed in completing this form, please contact  
Petitions Information at (703) 305-9382.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.**

NOTE: A grantable petition requires the following items:

- (1) Petition fee.
- (2) Reply and/or issue fee.
- (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and
- (4) Adequate showing of the cause of unavoidable delay.

**1. Petition fee**

☒ Small entity – fee \$ 55.00 (37 CFR 1.17(I)). Applicant claims small entity status.  
See 37 CFR 1.27.

☐ Other than small entity – fee \$ \_\_\_\_\_ (37 CFR 1.17(I)).

**2. Reply and/or fee**

A. The reply and/or fee to the above-noted Office action in the form of \_\_\_\_\_ (identify the type of reply):

☐ has been filed previously on \_\_\_\_\_

☒ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

☐ has been filed previously on \_\_\_\_\_

☐ is enclosed herewith.

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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## 3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

**WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.**

January 27, 2004

Date

(770) 804-9070

Telephone Number

40,819

Registration Number, if applicable



Signature

Gregory Scott Smith, Lava Group Law by  
Smith and Frohwein

Typed or printed name

P.O. Box 88148

Address

Atlanta Georgia 30356

Address

Enclosure ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unavoidable delay

☐

## **CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

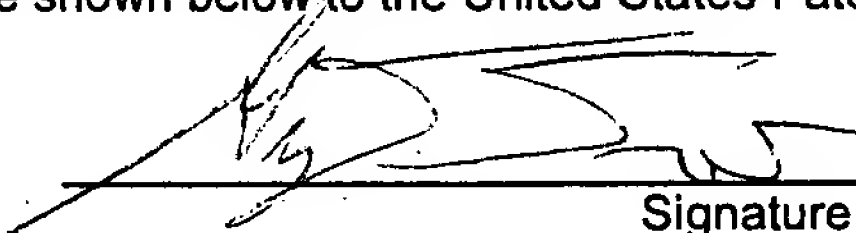
I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☒ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 872-9306.

January 27, 2004

Date



Signature

Gregory Scott Smith

Typed or printed name of person signing certificate

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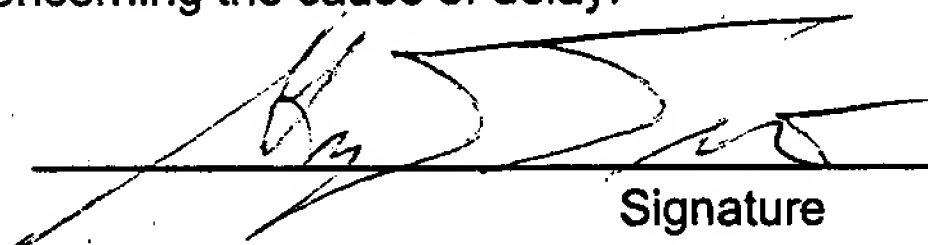
NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

January 27, 2004

Date

40,819

Registration Number, if applicable



Signature

Gregory Scott Smith

Typed or printed name

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

This application for United States Patent was unavoidably abandoned. A final Office Action was mailed by the USPTO on October 16, 2002. On April 16, 2003, counsel for the applicant filed a Notice of Appeal along with a Petition for a Three Month Extension of Time and the Necessary Filing Fees.

Subsequent to filing the Notice of Appeal, the applicant entered into bankruptcy proceedings and on August 26, 2003 Exodus Capital LLC received a court order that among other things, authorized them to take any action necessary to preserve the value of the applicant's collateral, which included the present application.

On September 12, 2003, Exodus Capital, LLC was informed by the counsel at the time, that they were withdrawing from representation. Exodus Capital, LLC then sought new counsel and selected the present law firm - LAVA Group Law by Smith & Frohwein.

Upon docketing of the new files, the present counsel discovered that an Appeal Brief was never filed for this case and immediately filed a Request for Continued Examination on November 11, 2003.

On December 11, 2003, the Office mailed an Official Communication indicating that the appeal was dismissed for failure to file an Appeal Brief and that the application was abandoned. The Office mailed this Official Communication to the previous counsel rather than the present counsel.

On January 9th, the present counsel received the Official Communication from the previous counsel, instructed Exodus Capital LLC regarding potential options and requested approval to take action. Exodus Capital LLC has now obtained approval to continue prosecution of the application.

Thus, the entire time from the abandonment of the application to the filing of this petition was unavoidable due to the various circumstances (a) bankruptcy proceedings, (b) withdraw of previous counsel, (c) identification of new counsel, and (d) transfer of files to new counsel. The Offices granting of this petition is greatly appreciated.

*(Please attach additional sheets if additional space is needed.)*